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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter of )

Geographic Partitioning and Spectrum )  
Disaggregation by Commercial Mobile )  
Radio Service Licensees )

WT Docket No. 96-148

Implementation of Section 257 of the )  
Communications Act — )  
Elimination of Market Entry Barriers )

GN Docket No. 96-113

To: The Commission

**REPLY COMMENTS OF THE RURAL TELECOMMUNICATIONS GROUP**

The Rural Telecommunications Group ("RTG"), by its attorneys, hereby respectfully submits these reply comments in response to the comments filed pursuant to the *Report and Order and Further Notice of Proposed Rulemaking* ("R&O and FNPRM" or "FNPRM"), released by the Federal Communications Commission ("FCC" or "Commission") on December 20, 1996, in WT Docket No. 96-148. These reply comments specifically address the lack of support displayed for the Commission's proposal to permit General Wireless Communications Services ("GWCS") licensees to partition geographic areas to entities other than rural telephone companies.

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## DISCUSSION

The comments in response to the *FNPRM* in WT Docket No. 96-148 provide no support for the Commission's proposal to eliminate the exclusive right of rural telephone companies to partition GWCS spectrum from GWCS licensees.<sup>1</sup> Of the nine commenters, only RTG expressly addressed the issue of whether the Commission should eliminate the sole GWCS designated entity preference for rural telephone companies. The majority of the commenters support the Commission's proposal to permit disaggregation of cellular radio service spectrum,<sup>2</sup> and two commenters, Benbow and A/P, focus their comments on extending broadband personal communications services ("PCS") partitioning and disaggregation rules to narrowband PCS. With the exception of RTG, not one commenter among this group of nine discusses the merits of "liberalizing"<sup>3</sup> the partitioning rules already in place for GWCS.<sup>4</sup>

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<sup>1</sup> Comments were filed by The Rural Telecommunications Group ("RTG"), BellSouth Corporation ("BellSouth"), GTE Service Corporation ("GTE"), Benbow P.C.S. Ventures, Inc. ("Benbow"), Airtouch Paging/PowerPage, Inc. (jointly filed "A/P"), Bell Atlantic NYNEX Mobile, Inc. ("BANM"), SBC Communications Inc. ("SBC"), AT&T Wireless Services, Inc. ("AT&T"), and The Cellular Telecommunications Industry Association ("CTIA").

<sup>2</sup> Disaggregation of cellular radio spectrum was supported by RTG, BellSouth, GTE, BANM, SBC, AT&T, and CTIA.

<sup>3</sup> The Commission refers to eliminating the one designated entity preference afforded to rural telephone companies in the majority of telecommunications services as "liberalizing." See *R&O and FNPRM* at ¶ 5.

<sup>4</sup> RTG notes that AT&T's comments generally support regulatory parity for all CMRS providers, but make absolutely no mention of the GWCS. Moreover, liberalizing the partitioning rules to permit partitioning by all CMRS providers will afford GWCS licensees the right to partition to non rural telephone companies only to the extent that the GWCS licensee provides mobile service. "Since GWCS licensees may provide fixed or mobile services, GWCS licensees may be CMRS licensees." *FNPRM* at ¶ 93 n. 258 (emphasis added). GWCS licensees may thus also not be CMRS licensees.

Therefore, the record regarding the “liberalizing” of the partitioning rules for GWCS consists of RTG’s extensive comments, which soundly and rationally oppose the proposal, and the Commission’s statements in the *FNPRM* associated with the proposal. The Commission’s statements consist of the following:

allowing more open partitioning of GWCS licensees [sic] may add flexibility to the service and allow the spectrum to be used more efficiently, however, there are specific questions that must be resolved before open partitioning of GWCS licenses can be implemented. We shall examine those questions in this proceeding.<sup>5</sup>

The Commission has thus openly declared that it lacks sufficient knowledge and information in its own right to make the decision to apply the “liberalized” broadband PCS partitioning rules to GWCS. For this reason, the Commission conscientiously follows the prescription of Section 1.425 of its Rules, promulgated pursuant to Section 553(c) of the Administrative Procedure Act, and solicits comments from the public on which it can base an educated decision.<sup>6</sup> The entire record with respect to the GWCS partitioning issue consists of RTG’s comments, which address the questions the Commission presented in the *FNPRM*. The Commission is charged with the responsibility of adopting a decision that is “based on a consideration of the relevant factors” presented to it during the rulemaking process.<sup>7</sup> While

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<sup>5</sup> *FNPRM* at ¶ 96 (emphasis added).

<sup>6</sup> 47 C.F.R. § 1.425 states: “The Commission will consider all relevant comments and material of record before taking final action in a rulemaking proceeding and will issue a decision incorporating its finding and a brief statement of the reasons therefor.”; 5 U.S.C. § 553(c) states, in pertinent part: “After notice required by this section, the agency shall give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments with or without opportunity for oral presentation. After consideration of the relevant matter presented, the agency shall incorporate in the rules adopted a concise general statement of their basis and purpose.”

<sup>7</sup> *Citizens to Preserve Overton Park v. Volpe*, 401 U.S. 402, 416 (1971).

“[i]t is well settled that the courts do not expect an administrative agency to respond to every comment or to discuss every fact or opinion in the comments submitted in informal rule making proceedings,”<sup>8</sup> “[n]otice and comment rulemaking procedures obligate the FCC to respond to all significant comments, for ‘the opportunity to comment is meaningless unless the agency responds to significant points raised by the public.’”<sup>9</sup> In this particular case, RTG expects the Commission to fully address the absence of comments filed in support of its proposal and the substantive information submitted by RTG in opposition to the proposal.

The Commission may not construe the overwhelming silence on the GWCS partitioning issue as acceptance or support for the proposal. This is a notice and comment proceeding, and silence on an issue does not register in the record as an affirmative statement. Silence does, however, register a lack of interest or concern about the issue. If the ability to partition GWCS licenses in rural areas or any areas was important to potential GWCS licensees, interested parties would have supported the proposal in writing. But as RTG has repeatedly informed the Commission, only rural telephone companies have a strong incentive to deliver new services to rural America. Therefore, the record on the partitioning issue in this proceeding will likely consist entirely of the Commission’s request for responses to specific questions, and those responses as submitted by RTG.

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<sup>8</sup> *In re Reorganization and Deregulation of Part 97 of the Rules Governing the Amateur Radio Service, Memorandum Opinion and Order*, 6 FCC Rcd 2959, at ¶ 3, citing *Thompson v. Clark*, 741 F. 2d 401, 408 (1984).


<sup>9</sup> *ACLU v. FCC*, 823 F. 2d 1554, 1581 (D.C. Cir. 1987) quoting *Alabama Power Co. v. Costle*, 636 F 2d 323, 384 (D.C. Cir. 1979).

## CONCLUSION

Under Section 553(c) of the APA and Section 1.425 of the Commission's Rules, the Commission is required to adopt decisions that are based on the record developed in this proceeding. RTG fully anticipates that the Commission's decision regarding the partitioning issue will be based on the record and explained by the record, and therefore RTG respectfully requests that the Commission retain the rural telephone company partitioning scheme for GWCS.<sup>10</sup>

Respectfully submitted,

**RURAL TELECOMMUNICATIONS GROUP**

By: 

Caressa D. Bennet  
Dorothy E. Cukier  
Bennet & Bennet, PLLC  
1019 19th Street, N.W.  
Suite 500  
Washington, D.C. 20036

Its Attorneys

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<sup>10</sup> A case is now pending in the United States Court of Appeals for the District of Columbia Circuit (*Rural Telecommunications Group v. FCC*, Case No. 97-1077, filed February 5, 1997), which challenges the Commission's decision to "liberalize" the broadband PCS partitioning rules. In the event that RTG prevails in this case, any similar rule adoption for GWCS would be overturned as well.

## CERTIFICATE OF SERVICE

I, Jacqueline Jenkins, an employee in the law firm of Bennet & Bennet, PLLC, hereby certify that a copy of the foregoing Reply Comments were served upon the following parties via first-class mail, U.S. postage prepaid on this 25th day of February 1997:

Cathleen A. Massey  
AT&T Wireless Services, Inc.  
1150 Connecticut Avenue, N.W.  
4th Floor  
Washington, D.C. 20036

Andre J. Lachance  
GTE Service Corporation  
1850 M Street, N.W.  
Suite 1200  
Washington, D.C. 20036

Wendy C. Chow  
Cellular Telecommunications Industry  
Association  
1250 Connecticut Avenue, N.W.  
Suite 200  
Washington, D.C. 20036

Benbow P.C.S. Ventures, Inc.  
Kathryn A. Zachem  
John B. Branscome  
Wilkinson, Barker, Knauer & Quinn  
1735 New York Avenue, N.W., Ste. 600  
Washington, D.C. 20006

AirTouch Paging/Powerpage, Inc.  
Carl W. Northrop  
E. Ashton Johnston  
Paul, Hastings, Janofsky & Walker LLP  
1299 Pennsylvania Avenue, N.W.  
10th Floor  
Washington, D.C. 20004--2400

Bell Atlantic Nynex Mobile, Inc.  
John T. Scott, III  
Crowell & Moring  
1001 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004

William J. Barfield  
Jim O. Llewellyn  
BellSouth Corporation  
1155 Peachtree Street, N.E.  
Suite 1800  
Atlanta, GA 30309-2641

SBC Communications, Inc.  
Bruce E. Beard  
13075 Manchester Road  
Suite 100N  
St. Louis, MO 63131


David G. Frolio  
David G. Richards  
BellSouth Corporation  
1133 21st Street, N.W.  
Washington, D.C. 20036

Carol Tacker  
Southwestern Bell Mobile Systems, Inc.  
17330 Preston Road  
Suite 100A  
Dallas, TX 75252

Ken Johnson  
OPASTCO  
21 Dupont Circle, N.W.  
Suite 700  
Washington, D.C. 20036

L. Marie Guillory  
National Telephone Cooperative  
Association  
2626 Pennsylvania Avenue, N.W.  
Washington, D.C. 20037-1695

Independent Alliance  
Mr. Steve Kraskin  
Kraskin & Lesse  
2120 L Street, N.W.  
Suite 520  
Washington, D.C. 20037

  
Jacqueline Jenkins